

(5) If no hearing was held, a statement of the right of any interested person to petition the Commandant to set aside the decision.

(b) The decision of the Administrative Law Judge must be based upon a consideration of the whole record of the proceedings.

#### **§ 20.903 Record of proceedings.**

(a) The record of testimony at the hearing, all exhibits received into evidence, any items marked as exhibits and not received into evidence, all motions, all applications, all requests, and all rulings will constitute the official record of a proceeding. Any proceedings regarding the disqualification of an Administrative Law Judge will be included in the record.

(b) Any person may examine the record of a proceeding at the Hearing Docket Office, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001. Any person may secure a copy of part or all of the record after payment of reasonable costs for duplication in accordance with 49 CFR part 7.

[CGD 91-228, 59 FR 15022, Mar. 30, 1994; 59 FR 45757, Sept. 2, 1994]

#### **§ 20.904 Reopening.**

(a) To the extent permitted by law, the Administrative Law Judge, for good cause shown in accordance with paragraph (c) of this section, may reopen the record of a proceeding for the purpose of taking additional evidence.

(b) Any party may file a motion to reopen the record within 30 days of the closing of the record of a proceeding.

(1) Any motion to reopen the record must clearly set forth the facts sought to be proven and the reasons claimed to constitute grounds for reopening the record.

(2) A party who does not file a response to any motion to reopen the record will be deemed to have waived any objection to the motion.

(c) If the Administrative Law Judge has reason to believe that reopening the record of a proceeding is warranted by any changes in conditions of fact or of law or by the public interest, the record of the proceeding may be reopened by the Administrative Law Judge before the Administrative Law

Judge's decision becomes an order of the Commandant assessing or denying a class II civil penalty.

(d) The filing of a motion to reopen the record does not affect the appeals periods specified in subpart J of this part, except that a motion to reopen the record tolls any time remaining in the appeals periods from the date of filing the motion until the Administrative Law Judge acts on the motion or the motion is withdrawn.

### **Subpart J—Appeals**

#### **§ 20.1001 General.**

(a) A party may appeal the Administrative Law Judge's decision by filing a notice of appeal with the Commandant. A party shall file the notice of appeal with the Commandant (G-CJ), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, Attention: Hearing Docket Clerk. A party shall file the notice of appeal not later than 30 days after issuance of the Administrative Law Judge's decision, and shall serve a copy of the notice of appeal on the other party and each interested person.

(b) A party may appeal only the following issues:

(1) Whether each finding of fact is supported by substantial evidence.

(2) Whether each conclusion of law is made in accordance with applicable law, precedent, and public policy.

(3) Whether there were any abuses of discretion by the Administrative Law Judge.

(4) The Administrative Law Judge's denial of a motion for disqualification.

(c) An interested person may appeal a summary decision but only on the issue that a hearing was not held and that evidence to be presented by the interested person was not considered in the issuance of the decision by the Administrative Law Judge. The appeal shall be made in accordance with the procedural requirements of this subpart.

#### **§ 20.1002 Record on appeal.**

(a) The record of the proceeding will constitute the record for decision on appeal.

(b) If the respondent requests a copy of the transcript of the hearing in the